



- 60A -

This photo, which I took, shows where EAI placed a new bright yellow guy marker (Arrow #1) on its steel down guy, but ignored the much more serious issue of the slack down guy that was providing no stability or support to the pole. In fact the guy was so slack the guy marker could not stay on properly (Arrow #2). The next pole in the span also contained a slack guy, which caused the two poles to bend in toward one another creating unacceptable slack in the span. Location: Little Rock, Enmar Dr.

72. This small sampling of violations that Entergy has created point up major deficiencies in EAI's standards and processes. First, they do not adequately address situations where EAI does not comply with its own standards on its poles which otherwise would have adequate space. Second, EAI does not recognize the legitimate compliance margin built into the NESC itself for any new or existing pole which complies with the NESC.

73. For example, EAI and other power companies have drawings and dimensions (measurements) for such things as setting depth for poles, required distances for wires and neutrals from the top of poles; spacing between wires; fused switches and transformers, etc. For its part, EAI designates 8 feet of the top of 40 foot poles as electric company space. The next 3 feet 4 inches (40 inches) to the top communications attachment, is the communications safety zone. A 40-foot pole needs a ground-set depth of six feet. Thus, if EAI sets a 40 foot pole 7 feet deep and actually places a secondary riser pipe 9 feet below the top of the pole, two feet of designed usable space has been wasted. EAI should accept responsibility for such deviations from its own standards, pay for remedial action where required and retrain its designers and construction crews to avoid such waste. EAI should certainly stop trying to make cable operators pay for it.

74. The net result of EAI's non-compliance with its own standards, the NESC or even good common-sense field practice is that EAI has wasted incalculable amounts of pole space in Arkansas, created innumerable unsafe field conditions and then blamed its wide-spread compliance failures on cable operators.

75. The bottom line is that if EAI would characterize its own joint use standards as being preferred, and acknowledge that NESC compliance is an appropriate "alternate" standard where its own internal guidelines cannot

reasonably be met, then the standards for joint use could be quickly resolved. The NESC and the NESC Handbook both provide support for this approach.

76. Finally, there are violations on the poles that cable operators are responsible for. Cable operators have gone about correcting those violations. However, as indicated earlier, many of these violations are not safety hazards and do not pose any threat to the public, to line works, the electric grid or electric system reliability. These kinds of violations should be recorded and corrected in the course of system maintenance and routine construction and system improvement. Serious violations that do pose a risk to safety and services integrity should be corrected promptly.

**False Premise No. 5: It Is Not Possible To Categorize Pole Attachment Clearance And Safety Issues And That Each Pole Must Be Resolved On A Case-By-Case Basis.**

77. One of the biggest stumbling blocks throughout this process has been Entergy's refusal to accept long-standing and reasonable application of a variety of NESC standards, including the NESC's grandfathering provisions.

78. EAI has stated that it will not accept a cable television facility as being compliant with NESC paragraph 13B (grandfathering) unless the cable operator secures a P.E. certification for each individual facility on each pole affected. What EAI in effect has done is state that each pole is unique and that design and corrections cannot be standardized. This, of course, is absurd. Complainants have identified this as EAI's False Premise No. 5.

79. To adopt Entergy's view and require a P.E. to examine each pole would be much like requiring a medical doctor to apply all band-aids. Reasonable procedures for a P.E. to be responsible for, in charge of, and, to sign off on a compliance certification could be negotiated. In fact, Comcast suggested to EAI at the May 26, 2004 meeting that Comcast could provide P.E. certification to EAI of compliance with the then almost agreed-upon guidelines. This type of P.E. certification would have covered violations corrected or grandfathered on a circuit basis and was offered by the cable side in lieu of a post inspection by USS. EAI stated that it would evaluate the proposal, but that it wanted USS to do post inspections initially and possibly accept category certification as "trust developed."

80. There is no question that an NESC expert could, and perhaps should, be involved in developing detailed field procedures and other materials reasonably required to determine that a cable facility (drop wire, J-hook, tap, power supply, cable line, etc.) is NESC compliant under NESC Paragraph 13B (Grandfathering). A well-designed and conducted NESC audit procedure would address categories of facilities and detail any specific data that must be gathered on each individual facility. The development of procedures would absolutely be done by categories such as drop wires to houses, mid-span clearances, etc.

81. The involvement of NESC experts (who may be P.E.) working for communications companies and pole owners could be a very useful part of

improving NESC and EAI standards compliance. The resulting inspection and audit procedures should be applied to all attachers.

82. Again, the corrections required by the P.E. should be the basis for retraining engineers, construction crews and joint use administrators. But the starting point is establishing reasonable guidelines, based on EAI standards and the NESC - which at its foundation is a practical and flexible "living, breathing" source of guidance. Its grandfathering provisions are critical to the Code and critical to allowing communications companies and pole owners to work through complex issues.

83. Specifically with respect to grandfathering, EAI has insisted that it will only accept grandfathering with P.E. certification on ***past violations***. If reasonable engineering guidelines cannot be applied to past, present, and future attachments, the record keeping for which poles, among thousands, the negotiated standards apply, and which poles EAI standards apply, as well as when a pole moves from the prior category to the latter, will be impossible. Trust and cooperation will never be restored and ultimately better safer electric plant will not be achieved.

**False Premise No. 6: The Permitting Freeze Is Not A Permitting Freeze.**

84. I read with interest EAI's assertion that it has not imposed a permitting freeze on the cable operators in this case. EAI's approach has been quite simple. For Alliance and Comcast, the two operators that have been subject to the full USS safety audit, EAI refused to allow them to access

additional EAI poles within a circuit until (1) payment was made on the USS invoices (2) all safety violations on the circuit are corrected.

85. I understand the operators are reluctant to pay the entirety of the USS fees because they believe that the work was not done well and that the allocation was not fair. This is detailed elsewhere.

86. With respect to correcting the violations, the greatest barriers to that ever occurring are: (1) the lack of reasoned standards; (2) coordination among the parties; (3) the condition of Entergy's own plant; and (4) EAI's continuous creation of new violations. As long as this is the environment, EAI's 100% compliance standard will never be met.

87. Contrast this approach with the one that EAI has taken with respect to another (non-complainant) cable company. As detailed in Marc Billingsley's reply declaration, one cable operator that is not participating in this complaint had an urgent need to install fiber optics on more than 160 Entergy poles in Jacksonville, Arkansas. While there are a number of NESC clearance issues on these poles before this operator attached, and there are even more that were created by the installation of the additional communications facilities, these can—and I understand will—be remedied.

88. In contrast to Entergy's stance toward the Complainants here that no new cable plant could be installed until all violations were cleared on the poles, and all make-ready work completed, EAI allowed this operator to build through the violations and correct them later. It is permissible to do

this because the work rules found at Section 4 of the NESC allow work to proceed on poles where there are NESC violations. These work rules for communications workers must be followed. This is the approach that— notwithstanding other aspects of the dispute—EAI should follow with new builds that Complainants will require. While I understand that EAI in some sense has “discriminated” against Complainants (perhaps because this company hired USS), my view is that this episode shows that Entergy knows how to accommodate joint-use requests expeditiously. This includes the critical elements of communicating and coordinating with the affected parties and being reasonable and flexible on certain clearance requirements.

### **Recommendations**

89. For all the Complainants in this matter, however, the current situation is untenable. I have several suggestions that I believe will solve a number of these problems and get things back on track.

90. First, engineering guidelines should be developed that recognize EAI's responsibility and right to develop its own specifications manual. These specifications should include rules for joint use which state EAI's preferences, but that acknowledge that NESC compliance is acceptable where pole and location constraints prevent achieving EAI's preference. No distribution specifications manual, and I have seen many, contains all combinations of electric facilities which are constructed on poles in the field. For example lights are added to many existing poles with a wide variety of

combinations of electric and communications facilities already in place. Manuals typically show one or two drawings with dimensions of lights mounted on exemplar poles. Utilities rely on adequate training, experience and inspection to combine facilities from multiple drawings on a given pole. This training must be based on understanding and application of the NESC.

91. Second, clear joint use procedures should be developed that allow each company to accomplish their work safely, timely and economically. The procedures must hold all parties accountable for compliance including EAI.

92. Third, the pole owners and *all* attaching parties (including EAI, telephone, municipal and state attachers, etc.) should be thoroughly trained in the applicable NESC and Energy standards.

93. Fourth the negotiation and execution of a new pole attachment agreement that could include EAI preferred standards and reflects NESC principles, existing legal precedent and field-developed best practices, particularly in the area of inspections and plant clean-up.

94. If the concepts such as those that I have outline in paragraphs 90-93 are implemented, then I believe that the relationships and operations that are in a shambles today can be restored. Despite all these problems EAI has shown the capacity to act reasonably and expedite access to some parties, if not Complainants. This at least shows that there is hope.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

ARKANSAS CABLE  
TELECOMMUNICATIONS  
ASSOCIATION; COMCAST OF  
ARKANSAS, INC.; BUFORD  
COMMUNICATIONS I, L.P. d/b/a  
ALLIANCE COMMUNICATIONS  
NETWORK; WEHCO VIDEO, INC.; and  
TCA CABLE PARTNERS d/b/a COX  
COMMUNICATIONS,

*Complainants*

v.

ENTERGY ARKANSAS, INC.

*Respondent.*

File No. \_\_\_\_\_

**Reply Declaration of Michael T. Harrelson, P.E.**

I, Michael T. Harrelson assert under the penalties of perjury  
of the law of the United States that the foregoing Reply Declaration is  
true and correct.

  
Michael T. Harrelson, P.E.

## **EXHIBIT 2**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED - FCC

JUN 10 2005

Federal Communication Commission  
Bureau / Office

In the Matter of

ARKANSAS CABLE  
TELECOMMUNICATIONS ASSOCIATION;  
COMCAST OF ARKANSAS, INC.; BUFORD  
COMMUNICATIONS I, L.P. d/b/a  
ALLIANCE COMMUNICATIONS  
NETWORK; WEHCO VIDEO, INC.; and  
TCA CABLE PARTNERS d/b/a COX  
COMMUNICATIONS,

*Complainants*

v.

ENTERGY ARKANSAS, INC.

*Respondent.*

File No. EB-05-MD-004

**REPLY DECLARATION OF JEFF GOULD**

I declare under the penalty of perjury of the laws of the United States that the foregoing Reply Declaration is true and correct.

Date:

6/9/05

Jeff Gould  
JEFF GOULD

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

ARKANSAS CABLE  
TELECOMMUNICATIONS ASSOCIATION;  
COMCAST OF ARKANSAS, INC.; BUFORD  
COMMUNICATIONS I, L.P. d/b/a  
ALLIANCE COMMUNICATIONS  
NETWORK; WEHCO VIDEO, INC.; and  
TCA CABLE PARTNERS d/b/a COX  
COMMUNICATIONS,

*Complainants*

v.

ENTERGY ARKANSAS, INC.

*Respondent.*

File No. EB-05-MD-004

**REPLY DECLARATION OF JEFF GOULD**

I, JEFF GOULD, hereby declare:

1. I am over eighteen and competent to give testimony in this matter.
2. I am Director of Engineering for Cox Communications for the Greater Arkansas region.
3. In my capacity as Director of Engineering, I am responsible for construction design and engineering. My responsibilities also include acting as a primary contact to utility companies and other pole owners regarding pole attachment and construction issues.

4. In my capacity as Director of Engineering, I have become involved in the dispute giving rise to the above-captioned complaint.

5. I incorporate, by reference, my Declaration that was incorporated in the complaint.

### **Outage Reports and Trouble Tickets**

6. I personally reviewed the summary charts of the service outages. Entergy provided with Exhibit 93. Entergy listed the incidents without power outages or blinks as "false" outages. According to the charts, actual outages are where customers experienced a loss of power or a blink.

7. I also reviewed Exhibit 93. That exhibit showed that only 90 were true outages. Additionally, in reviewing the outage reports, I saw nothing indicating that the outages had any causal connection to Cox's facilities. Indeed, most of the reports do not involve cable plant at all.

8. In my experience, these "outage reports" are usually referred to as "trouble tickets" or "truck roll reports." And, as far as I know, "trouble tickets" or "truck roll reports" are generated every time a utility receives any kind of report from customers or any person who sees a downed line or experiences a power outage, including cable employees. I do not believe Entergy's characterization of these all as "Emergency Tickets" is correct.

9. Moreover, most of the "trouble tickets" involve incidents completely unrelated to us. For example, Trouble Ticket 100009396 involved a lightning strike that caused a transformer to catch on fire. As far as I know, Entergy never notified

anyone from my company of the vast majority of these incidents. At this point, it would be difficult, if not impossible to determine which party was actually responsible for a particular incident.

10. In any event, most of the tickets indicate that where there was a true outage, the cause is unknown. Specifically, only 90 out the 800 documents show actual outages; and 21 out of those 90 outage tickets state "Cause Unknown."

11. As I indicated above, customers and other laypersons are often the source of a particular trouble ticket. But customers and other laypersons often do not know a cable line from a telephone line. And, in some cases, when the cable crew arrives following a report of a downed cable line, the crew discovers that the telephone line or other non-cable facilities are down.

12. Other trouble tickets that I reviewed show nothing more than a broken or downed cable service drop. During severe weather, it is not unusual for drops to break because they are very light-weight. But, it is important to note that they are almost always lower on the pole than electric facilities and rarely cause an interruption in electric service. \_\_\_\_\_

13. I do not believe that the materials in Exhibit 93 were conclusive evidence of anything other than the fact Entergy received service calls.

14. It is accurate to say, according to Entergy's reports, that over the course of six years, 33 outages *may have involved* cable. But, I can only verify that 3 were actually caused by cable facilities.

## **Cox Has Accepted Responsibility For Its Violations**

15. Cox has accepted its share of responsibility and has made significant progress making changes to the plant, as required by Entergy. We have worked hard to make a lot of changes at Entergy's request.

16. The majority of the changes required by Entergy can be made without involving Entergy or the telephone company and typically involve bonding, anchor replacements and adjustments to drops. But, it is impossible to correct every violation without the participation of other parties on the pole. Many of the violations that Entergy cites cannot be corrected without Entergy's or telephone's participation.

17. Another big problem we have encountered with the inspection is that the standards used to identify safety violations vary between Entergy and USS. For example, it is not unusual for an EAI representative like Brad Welch to agree to one set of engineering solutions only to have USS overrule them subsequently.

18. This type of utility dysfunction can have serious consequences. In one case, I ordered *and paid for* make-ready in accordance with USS' and Entergy's joint use requirements. After receiving notification from Entergy joint-use personnel that it had completed the work, Steve Breshears, a Cox employee that I supervise, visited the field to find that only about 50% of the work had actually been completed. My construction manager Chip Dunlap notified Entergy's Cindy Thompson who, in turn pledged to have the work completed properly. About 3 and a half weeks later, Entergy again erroneously notified me that the work was

complete. My field review revealed that the two make-ready orders were incomplete and that Entergy created 3 or 4 new violations on those poles.

19. It is difficult for us to operate under these circumstances. We work in a competitive market environment and must carefully evaluate expensive, resource-draining projects. That is why it is imperative that either Entergy or a third party determine what rules apply so we can manage our plant according to those rules.

20. What I find to be both frustrating – and shocking from a business perspective – is that USS does not purport to find every violation on every pole. Instead, USS' objective is merely to identify a problem pole and have the cable operator conduct a comprehensive review of the problems. This is for both new and existing attachments.

21. In addition, I have never seen any documentation showing that a pole has passed inspection. Receiving proof that a particular pole was cleared is important for future inspections so we cannot be held responsible for violations created by a third party, including Entergy. For Cox, this is especially important. We are unclear as to whether Entergy will inspect us in the future and determine that field variances Tony Wagoner granted are no longer acceptable.

### **Entergy Has Caused Violations**

22. What really troubles me is that Entergy has created violations on poles where Cox has just spent considerable resources correcting problems. In some cases, Entergy installed transformers, creating clearance violations on poles only three months after Cox made corrections USS required. Often Entergy creates these

violations without notifying Cox. These are not isolated instances, but continuing practices. I have provided a number of examples of these problems to ACTA's expert Mickey Harrelson which he addresses in his Reply Declaration.

23. Entergy's theory that cable television facilities are almost always installed last on the poles is wrong. Entergy has added thousands of street lights and new transformers since our initial cable build out in the 1970s and 1980s to serve new developments. Unfortunately, it is clear that Entergy installed many of these street lights without regard for clearances. As a result, these street lights created violations with respect to our cable facilities, causing the pole to be out of compliance with the Code and/or Entergy's joint use standards. Quite often Entergy and USS are citing Cox for "violations" that Entergy itself has committed.

24. In many places, Entergy is enforcing standards against Cox that it does not enforce against itself. For example, in Magnolia and Malvern, Entergy and USS have cited Cox for failing to install guy markers. In the course of attempting to comply with USS' and Entergy's requirements, Cox has placed nearly all of the guy markers USS and Entergy required. In doing so, we observed that on many of those same poles, Entergy has unmarked guys. And, even though we have notified Entergy that these conditions exist, it has not placed markers. It seems to me that accusations that Cox and other cable operators have deplorable plant conditions is disingenuous given that Entergy hasn't even brought its own facilities into compliance with its Requirements.

### **Entergy Has Made False Statements**

25. Following the ice storms of 2000 and 2001, our crews went out to restore service and to repair or replace damaged facilities. Entergy's allegations that we did not inspect or make repairs are not true. We worked just as hard as Entergy to correct ice storm damage. But, since we did not believe it was safe for our workers or contractors to approach poles until Entergy cleared damaged or unsafe electric facilities, we often visited the poles after Entergy's crews. In other cases we could not even make repairs or restore service until Entergy had restored power service to our electronics.

26. Although we worked very hard to repair our facilities and restore service after the ice storms, we did not ride-out and inspect every inch of plant. To do so would be contrary to standard industry practice and would, in any event, have been logistically impossible. Moreover, it is my understanding that Entergy did not inspect every attachment in the aftermath of the storms.

27. Entergy's claims that Cox had inadequate or non-existent maps is absolutely not true. As explained below, Cox's maps are highly detailed and sophisticated.

28. It is also my understanding that Entergy cites a number of downed cable television lines as evidence that cable operators somehow were negligent in maintaining their lines. The truth is that the cable lines Entergy refers to went down during the ice storm of 2000/2001. Regardless of whether Cox's attachments were code-compliant, weather as severe as that we experienced in these ice storms would still have brought our plant, and Entergy's plant, down.

### **Prior Practices Have Been Disregarded**

29. The parties' prior course of dealing has always been—and continues in the field to be—that the parties bring any hazardous issues to the other's attention to address them as soon as possible. One of the fundamental breakdowns in the process appears to be with Entergy's refusal to acknowledge the diversity of requirements in the field and how field personnel managed joint use in the field.

30. For example, over the course of the parties' history, Entergy has not been as concerned with guy markers, anchors or 12 inch separations between communications conductors as it claims to be now. Even if the new concern for these standards at headquarters was legitimate, the field employees and construction crews do not implement these standards consistently. Even if Entergy's Joint Use personnel at headquarters truly intended for formal, written authorizations and documentations of all code variances, the fact remains that the Entergy field personnel, with whom we have a long history in the field, often grant oral approvals, waivers and variations. For example, field personnel have for years allowed us to attach to Entergy's anchors. Entergy personnel also often gave verbal approvals to Cox to apply exceptions to clearance requirements. The fact is that Entergy's description of a consistently administered and enforced joint use system does not reflect the reality in the field.

### **Entergy Shows Preferential Treatment To Attachers That Hire USS**

31. While trying to satisfy Entergy's requirements, I have observed that Entergy is willing to make more concessions to cable operators like Cox that hire USS to perform survey work.

32. In fact, the reason Cox engaged USS, both in Entergy's service area and in Jonesboro (which is not Entergy's service area) was because of political pressure from the pole owners. Before Cox engaged USS, Entergy delayed action on our make-ready requests submitted in connection with its upgrade. After we saw no substantial progress on these requests for about four months, we became very concerned that we were not going to be able to meet our deadlines.

33. At one point, when we were complaining about Entergy's pace of the work, Entergy's Brad Welch stated that perhaps we should hire USS to help improve the pace. To Cox, the message was clear: we would not be able to move forward with the upgrade unless we hired USS.

34. Indeed, after we hired USS, our situation improved in that Entergy seemed willing to move the project forward, albeit at an extremely slow pace. However, Cox is far from satisfied with the services USS provides.

35. Our primary complaints about USS are the same as Comcast's and the other Complainants:

- USS does not identify all violations or non-conforming conditions;
- USS does not prepare make-ready worksheets for the contractors;

- Cox must hire UCI to come in and perform a complete inspection, identify all violations or non-conforming conditions and prepare work orders for construction crews; and
- USS' suggested remediation is often wrong or actually creates violations instead of clearing them.

36. Moreover, whatever progress we were able to make after hiring USS came at an extreme cost. For example, USS charges a premium for services we found to be only marginally useful. As with Comcast, for each pole USS inspected for Cox, Cox had to hire UCI to revisit each pole to prepare make-ready work orders. All things being equal, Cox certainly would have preferred to engage UCI directly to do this work. The only value from USS' work that we have been able to discern, was the favor it incurred with Entergy by engaging USS.

37. I am aware that Cebridge also uses USS, but appears to obtain more benefit from that relationship than Cox. For example, Entergy permits Cebridge—but not Cox—to use certain construction methods to help expedite construction and reduce costs. For example, Entergy permits Cebridge to use stand-off brackets. Stand-off brackets are installed on the poles to help attachers achieve proper clearances. Essentially, attachers affix the brackets in the communications space, perpendicularly on the poles, forming a cross. Instead of attaching to the pole itself, the communications company attaches its facilities to the arms. This is one method of avoiding or deferring a pole change-out or underground construction where there is not enough vertical clearance on a pole.

38. Whether or not a pole owner permits this practice varies from pole owner to pole owner. It seems discriminatory to me, however, for a pole owner to permit one attacher to use this method of construction, but not another. Using stand-off brackets has the potential to save an attacher thousands of dollars associated with pole replacements or underground construction. Allowing one attacher to use this construction technique, but not others, also has competitive implications.

39. Perhaps more important, USS and Entergy permit Cebridge to build its network prior to the telephone companies' doing the necessary make-ready work. This is not an unusual practice, but Entergy has refused to give Cox permission to do this. Recognizing that it can often take months to coordinate make-ready among all attachers on the poles, pole owners often allow attachers to make temporary attachments before the make-ready is completed. In my opinion, it is not evidence of wrong doing, as Entergy alleges, but evidence of two companies working together. Like others, I am ultimately glad to see that Entergy seems capable of working fairly with at least one communications company. I only wish that it would extend the same treatment to Cox.

#### **USS' Inspections Are Flawed And Provide No Benefit To Cox**

40. I find the results of USS' inspections to be inconsistent at best. A review of the inspection sheets USS and Entergy turn over, shows that no two USS inspectors produce the same evaluation. I think USS' inadequate results are

because of poor training, little understanding of the NESC, a willingness to be flexible in one case and rigid and unbending in an identical case.

41. At a fundamental level, the audit and inspection program is flawed in its design. Standard industry practice is to hire contractors to perform survey and inspection work on a per-pole basis. This creates an incentive for the contractor to do the work properly the first time because it cannot collect additional payment for time spent correcting defective work or defending its assessment.

42. Furthermore, Entergy's comparisons of USS rates with other firms' rates are deceptive. Typically, parties negotiate a per pole deal for the type of survey and inspection work for which Entergy contracted with USS. The higher hourly rates Entergy cites usually apply to additional services outside the scope of the contract. In other words, the other firms' hourly rates are irrelevant because we would not ordinarily contract survey and inspection services on an hourly basis.

43. More important, the services other contractors like UCI provide are by far more comprehensive—and useful. According to USS, the scope of its engagement is to identify poles with violations with the goal of getting the cable operator out to the pole to assess and make corrections. Typically, when we hire contractors to do survey and inspection work, the contractors identify all of the problems on the poles and then identify the make-ready that must be completed to clear the pole. USS does not do this. USS' only function has been to collect information about the poles and issue a notification when it sees a violation.

44. In any event, I see no benefit from USS' inspections. Cox derives no benefit from the GPS measurements USS recorded or the maps USS produced with them. Cox's maps are far more accurate and detailed than the GPS maps USS creates for Entergy. Cox's maps contain a wealth of information including street addresses and distances between poles. And, given that GPS devices can record erroneous information, our maps are far more accurate and useful. Our maps contain as-measured distances between the poles.

45. In fact, Cox specifically told USS and Entergy that, because it had these very detailed maps, GPS measurements and new maps would be of no use to Cox. It is clear to me that USS' goal is to deliver mapping and database information to Entergy by the end of the audit and inspection program. For example, on August 12, 2004 when I challenged the collection of GPS data, USS' Tony Wagoner told Cox that USS is working on a database to sell to Entergy, based on the information collected during the audit.

46. It is my understanding that USS' services are very valuable to Entergy. Prior to Entergy's engagement of USS, Entergy did not have its own maps or pole numbering system. Historically, we would apply for particular poles by identifying the street address or other geographic identified, not the pole number.

### **Cox Should Be In This Case**

47. I strongly disagree with Entergy's contention that Cox should not be a part of this suit. In Spring 2004, I first became aware that USS was working for Cox in Jonesboro, Arkansas. It is somewhat unclear how USS originally came to

work for Cox. Cox's contracting procedures require company representatives at the Vice-President level to sign contracts. However, at that time no written contract for services between USS and Cox existed. From what Cox can determine, Rod Rigsby, who worked for Cox up until approximately April 2004, contracted with USS as early as April 2003. Mr. Rigsby left Cox to work for USS.

48. From what I could piece together, USS' Tony Wagoner and Mr. Rigsby had entered into what Mr. Wagoner referred to as a "handshake" deal to perform services for Cox in Jonesboro. Mr. Rigsby structured the invoicing system in a way that gave the impression to the casual observer that Cox was paying Jonesboro's City Water and Light Department, not USS. The truth was, however, that Cox was paying USS directly. Once I unraveled the scheme, I made an effort to determine the scope of USS' employment. Cox would have discontinued its relationship with USS, but for political pressure from the City of Jonesboro and another electric pole owner to keep USS involved in the project.

49. In the end, USS significantly increased Cox' projects costs. Before Mr. Rigsby brought USS in, True Vance was performing the work for about \$14 per pole. At some point in April or May 2003 Mr. Rigsby announced that he "re-bid" the project and hired USS. However, no Cox representative has ever been able to find any documentation of a bidding process or any proposal from USS. Cox had budgeted approximately \$600,000 for the original project. After USS was done, Cox paid \$922,000 in engineering costs to USS and an additional \$1.2 million to USS